

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KHAN AIR, LLC,

Plaintiffs,

v.

UNITED STATES AIRCRAFT INSURANCE
GROUP, *et al.*,

Defendants.

No. C05-0420L

ORDER GRANTING LEAVE TO
AMEND

This matter comes before the Court on “Plaintiff’s Motion for Leave to File Plaintiff’s First Amended Complaint.” Pursuant to Fed. R. Civ. P. 15(a), leave to amend “shall be freely given when justice so requires.” There is, therefore, a “strong policy in favor of allowing amendment” after “considering four factors: bad faith, undue delay, prejudice to the opposing party, and the futility of amendment.” Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994).

Defendant AirSure Limited of Colorado, Inc.,¹ argues that the first four causes of action set forth in the proposed first amended complaint are subject to dismissal for all the reasons stated in AirSure’s motion to dismiss and that plaintiff’s fraud claim is futile because no misrepresentation is alleged with the particularity required of Fed. R. Civ. P. 9(b). The Court

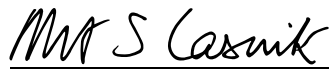
¹ The other defendants have not opposed plaintiff’s motion.

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1 has addressed AirSure's arguments regarding plaintiff's breach of contract, misrepresentation,
2 bad faith, and Consumer Protection Act claims in its "Order Denying Defendant AirSure
3 Limited's Motion to Dismiss," of even date. As for plaintiff's newly-alleged fraud claim,
4 although the vague allegation regarding "other" misstatements of the terms of the insurance
5 coverage procured by AirSure may be subject to dismissal pursuant to Rule 9(b), plaintiff's
6 allegations regarding the Certificate of Insurance provide the particulars demanded by that rule.
7 Based on the existing record, it appears that at least a portion of the fraud claim would survive a
8 motion to dismiss.

9
10 There being no evidence of undue delay, bad faith, or prejudice, the motion to
11 amend is hereby GRANTED. The First Amended Complaint that was filed on July 5, 2005, is
12 now the operative pleading in this matter. Defendants shall plead in response to the amended
13 complaint within ten days after service of this Order.

14 Dated this 29th day of July, 2005.

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17 Robert S. Lasnik
18 United States District Judge
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